

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC DION JOHNSON,

Petitioner,

vs.

Civil Case No. 06-11968
Crim. Case No. 02-80237

UNITED STATES OF AMERICA,

Respondent.

/

**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION
AND FOR AN ENLARGEMENT OF TIME**

This is a habeas case under 28 U.S.C. § 2255. Petitioner was convicted on March 11, 2003, following a guilty plea and Rule 11 agreement, to possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1). He was sentenced to 120 months imprisonment, the statutory mandatory minimum. Petitioner did not file a direct appeal.

On April 24, 2006, Petitioner filed a motion under § 2255.¹ Petitioner attached the standard form supplied by the Clerk's office, AO 243, in which he listed the grounds for the motion as ineffective assistance of counsel and his sentence violates the Fifth and Sixth Amendments. In a declaration attached to the motion, he requested forty five (45) days in which to submit a brief in support of his motion. On May 3, 2006, the Court

¹More precisely, on April 24, 2006, Petitioner filed a "Motion to file § 2255" in which he stated he had mailed a § 2255 motion to the Court on February 9, 2006. After contacting the Clerk's Office to inquire as to the status of the motion, he was informed that no such motion had been received.

granted the request in part, requiring Petitioner file a brief within thirty (30) days of the date of the order. The Court also directed the government to file a response within thirty (30) days thereafter. Petitioner failed to timely file a brief in support of his motion. Accordingly, on October 30, 2005, the Court dismissed the motion. See Order Dismissing Motion under 28 U.S.C. § 2255.

Before the Court is Petitioner's motion for reconsideration and for an enlargement of time. Petitioner admits that he did not file a brief within the time allotted by the Court, but explains that he has encountered difficulties in receiving assistance from other prisoners and in contacting his trial counsel. He requests reconsideration of the dismissal and another enlargement of time in which to file a brief.

Petitioner filed the instant motion on November 21, 2006, almost one month after the Court dismissed his § 2255 motion. Under the local rules, a motion for reconsideration must be filed within ten (10) days from the date of the order. See E.D. Mich. LR 7.1 (g). Petitioner's instant motion is well beyond that time frame. As such, the motion is DENIED.

Petitioner is not prevented from filing a § 2255 motion when he is able to include an accompanying brief, subject to any defenses which may be raised by Respondent.

SO ORDERED.

Dated: December 7, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the parties of record and Eric Dion Johnson, 21634-039, FCI McKean, P.O. Box 8000, Bradford, PA, 16701-0980 on this date, December 7, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160